

## **SUPPLEMENTAL INSTRUCTIONS TO FORM I-589 APPLICATION FOR ASYLUM AND FOR WITHHOLDING OF REMOVAL**

### **I. Application for withholding of removal under Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”)**

Form I-589 application for asylum and withholding of removal will be considered an application for withholding of removal under the Convention against Torture if you tell the Immigration Judge that you would like to be considered for withholding of removal under the Convention against Torture or if it is determined that the evidence you present indicates you may be tortured in the country of removal. To apply for withholding of removal under the Convention against Torture, you must fully complete the I-589. You should include a detailed explanation of why you fear torture in response to Question 5, Part C of the application. In response to Question 3, Part C you should write about any mistreatment you experienced or any threats made against you by a government or somebody connected to a government.

Only Immigration Judges and the Board of Immigration Appeals may grant withholding of removal or deferral of removal under the Convention against Torture. The Immigration Judge will first determine whether you are eligible for asylum under the Immigration and Nationality Act (INA) section 208 or for withholding of removal under INA section 241(b)(3). If you are not eligible for either form of relief from removal, the Immigration Judge will determine whether the Convention against Torture prohibits your removal to a country in which you fear torture.

### **II. What is withholding of removal under Article 3 of the Convention against Torture?**

Article 3 of the Convention against Torture, prohibits the United States from removing you to a country in which it is more likely than not that you would be subject to torture. The Convention against Torture does not prohibit the United States from returning you to any other country where you would not be tortured. This means that you may be removed to a third country even if you are protected from removal to the country in which you would be tortured. Although you are protected from removal to a country where it is more likely than not that you will be tortured, withholding of removal does not allow you to adjust to lawful permanent resident status or to petition to bring family members to come to, or remain in, the United States.

### **III. Who is eligible for withholding of removal under the Convention against Torture?**

To be granted withholding of removal to a country under the Convention against Torture, you must show that it is more likely than not that you would be tortured in that country. “Torture” is defined in Article 1 of the Convention against Torture and at 8 CFR 208.18(a). For an act to be considered torture, it must be an extreme form of cruel and inhuman treatment; it must cause severe physical or mental pain and suffering; and it must be intended to cause severe pain and suffering. Torture is an act inflicted for such purposes as obtaining from the victim or a third person information or a confession, punishing the victim for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person, or for any reason based on discrimination of any kind. Torture must be inflicted by or at the instigation of a public official or someone acting in official capacity, or it must be inflicted with the consent or acquiescence of a public official or person acting in official capacity. The victim must be in the custody or physical control of the torturer. Torture does not include pain or suffering that arises from or is incidental to lawful sanctions.

### **IV. Who is barred from being granted withholding of removal and what happens to someone who is barred?**

You may not be granted withholding of removal pursuant to 8 CFR 208.16 if you are barred from withholding of removal under INA section 241(b)(3)(B). If you 1) assisted in Nazi persecution or engaged in genocide, 2) have persecuted another person, 3) have been convicted of a particularly serious crime and therefore represent a danger to the community of the United States, 4) are considered for serious reasons to have committed a serious non-political crime outside the United States, or 5) represent a danger to the security of the United States, you may not be granted withholding of removal. If it is more likely than not that you will be tortured in a country but are ineligible for withholding of removal, your removal will be deferred under 8 CFR 208.17(a). Deferral of removal does not confer any lawful or permanent immigration status in the United States and does not necessarily result in release from detention. Deferral of removal is effective only until it is terminated. Deferral of removal is subject to review and termination if it is determined that it is no longer more likely than not that you would be tortured in the country to which your removal is deferred or if you request that your deferral be terminated.